

**EMERYVILLE POLICE DEPARTMENT
ADMINISTRATIVE INVESTIGATION**

TO: Ken James
Chief of Police

FROM: Michael Fraser
Fraser Investigations & Consulting
4300 Black Avenue #33
Pleasanton, CA 94566

SUBJECT: ADMINISTRATIVE INVESTIGATION – EPD IA 14-01

Subject Officer

Officer Joshua Patterson (Serial Number: 356)

SUMMARY

On April 9, 2014 I met with Emeryville Police Chief Ken James and Police Commander Jeannie Quan at the Emeryville Police Department. At the meeting we discussed several alleged policy violations and possible violations of state law on the part of Emeryville Police Officer Joshua Patterson. I had been retained to conduct the administrative investigation(s) into the allegations and Officer Patterson's behaviors during several incidents. I have received documentation, which included but not limited to departmental memoranda, police reports, video CDs, radio transcripts and dispatch records which are included in this investigative report as exhibits.

Given the number of incidents in which Officer Patterson is alleged to have violated department policy, this report will be separated into individual incidents for which the alleged policy violations had occurred. Each incident shall include the alleged violations, a synopsis of the incident in question, in essence statements of witnesses and Officer Patterson, administrative insight and findings as they relate to the alleged violations. Copies of the policies and rules alleged to have been violated are attached (Exhibits 30, 31 33 & 33)

Background

Joshua Patterson was a municipal police officer with Draper City, Utah for approximately 2¼ years prior to being hired by the Emeryville Police Department on January 17, 2012. At Emeryville Officer Patterson was assigned to the department's Field Training Officer (FTO) program. During the program Patterson was exposed to and trained on department policies and practices, which he was required to acknowledge and demonstrate his understanding. Copies of pertinent documentation of the Officer Patterson's initial training are attached (Exhibit 29). He successfully completed the FTO program on or about May 12, 2012 and was assigned as a solo patrol officer.

Officers are provided with access to the department's policy manual, the manual of rules and all general orders. Per the Emeryville Police Department Policy Manual § 106.1 and the Department Manual of

Incident 1

March 9, 2014

██████ – Detention/Arrest

Rules § 02.00 (Exhibits 30 & 31), it is the responsibility of all Emeryville Police Department employees to be familiar with and conform to department policy, rules and regulations.

INCIDENT 1

<u>Date of Occurrence</u>	<u>Location</u>	<u>EPD Event/Case Number & Description of Incident</u>
March 9, 2014	Black and White Liquors 4051 San Pablo Avenue Emeryville, CA	1408-1698: Detention/Unlawful [REDACTED]

SUMMARY OF ALLEGATIONS

1. Officer Patterson failed to document the use of force when he handcuffed [REDACTED] (EPD Policy § 354.2: Handcuffing is considered a use of force).

Violation of Emeryville Police Department Policy Manual Section 300.4 – REPORT THE USE OF FORCE

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident.

2. Officer Patterson arrested and later released [REDACTED] and never documented the arrest/detention.

Violation of Emeryville Police Department Policy Manual Section 354.2.3 - HANDCUFFING OF DETAINEES

Situations may arise where it may be reasonable to handcuff an individual who may, after subsequent investigation, be released prior to arrest. Such a situation is considered a detention, rather than an actual arrest. Unless arrested, the use of handcuffs on detainees should continue for only as long as is reasonably necessary to assure the safety of officers and others. Officers should continuously weigh the safety interests at hand against the intrusion upon the detainee when deciding to remove handcuffs from a detainee. When an individual is handcuffed and released without an arrest, a written report of the incident shall be made to document the details of the detention and need for use of handcuffs.

3. Officer Patterson conducted a search of [REDACTED] without justification.

Violation of Emeryville Police Department Policy Manual Section 440.4 - PAT-DOWN SEARCHES

A pat-down search of a detained subject may be conducted whenever an officer reasonably believes that the person may possess an object that can be utilized as an offensive weapon or whenever the officer has a reasonable fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to the following:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or neighborhood where the stop takes place.

- (d) Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
- (e) The appearance and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

4. Officer Patterson showed a lack of courtesy and respect when he used profanity when dealing with [REDACTED]

Violation of Emeryville Police Department Manual of Regulations Section 05.02 – CONDUCT TOWARD OTHERS

The Police Department exists to serve the public safety needs of all persons within the jurisdiction of the City. Accordingly, it is the fundamental policy of the Department that members and employees shall treat all persons with courtesy and respect. Discrimination or racism in any form shall never be tolerated.

5. Officer Patterson used rude and profane language prior to searching [REDACTED]

Violation of Emeryville Police Department Manual of Regulations Section 05.04 – RUDE CONDUCT – CITIZENRY

Members and employees shall perform their duties attentively and courteously, avoiding rude, threatening, harsh insulting, profane, insolent or demeaning language, and they shall maintain a professional bearing regardless of provocation to do otherwise.

6. Officer Patterson failed to take appropriate action to meet the requirements set forth in the Department Mission and Value Statements.

Violation of Emeryville Police Department Manual of Regulations Section 05.10 – GENERAL ON-DUTY RESPONSIBILITIES

Within the City of Emeryville, while on duty, members shall at all times take appropriate action to meet the requirements set forth in the Department Mission and Value Statements. Members and employees shall at all times respond to lawful orders of superior officers, and other proper authorities as well as calls for police assistance from citizens. Proper police action shall be taken whenever it is required.

General Mission of the Police Department (in part)

Protect the Constitutional Rights of all individuals.

Taking those steps necessary to promote order, but in a fashion that is least intrusive into the lives of the citizens.

Department Values Statement (in part)

We will take that action which is least obtrusive in the Lives of the Citizenry. Whenever possible, we will reason with individuals in the enforcement setting before resorting to the use of force, or effecting an arrest. Our purpose is to maintain order. We recognize that it is the domain of the Courts to punish person convicted of an offense.

7. Officer Patterson failed to perform his duty as required by failing to document an arrest/detention, using profanity, conducting an illegal detention and a search without justification.

Violation of Emeryville Police Department Manual of Regulations Section 05.17 – PERFORMANCE OF DUTY

All members and employees shall perform their duties as required by the Mission and Values Statements, or directed by law, Department rule, policy or primary directive, or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as direct, notwithstanding the general assignment of duties and responsibilities.

8. Officer Patterson failed to submit required reports.

Violation of Emeryville Police Department Manual of Regulations Section 06.10 – REPORTING

Members and employees, consistent with State law, shall promptly submit such reports as are required by the performance of their duties, or by competent authority.

9. Officer Patterson's actions demonstrated unsatisfactory performance and neglect of duty.

Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

B. Incompetence, unsatisfactory performance, or neglect of duty.

10. Officer Patterson's actions demonstrated discourteous treatment of the public.

Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

J. Discourteous treatment of public or other City Staff

11. Officer Patterson's actions demonstrated an unauthorized use of authority.

Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

Q. Unauthorized use of City uniforms, insignia, identification, authority or discretion.

INCIDENT SYNOPSIS

The following account has been gleaned from a memorandum from Sergeant R. Lee to Commander Quan dated March 9, 2014 (Exhibit 1), EPD dispatch radio and telephone transcription (Exhibit 2), EPD EVENT Record (Exhibit 3).

On March 9, 2014 at about 2230 hours, Sergeant Lee was approached by Officer Jared Malec. Malec told him that he had concerns regarding Officer Patterson and the way he handled a call from earlier that evening. At approximately 2147 hours EPD dispatch received a call from [REDACTED], an employee of Black and White Liquors. [REDACTED] said that some homeless people were throwing trash into the street and bothering customers. Officer Patterson arrived first and advised dispatch to log him as the primary officer. Officers Abogado, Rice and Malec arrived shortly after.

Sergeant Lee wrote in his memorandum that Patterson made contact with the reporting party and Malec contacted one of the subjects responsible for the disturbance, [REDACTED]. After speaking with the reporting party, Patterson approached Malec and [REDACTED]. Malec told Lee that Patterson started a pat down search of [REDACTED] and asked if he had anything sharp that would stick him. The subject didn't respond. Officer Patterson then allegedly said to [REDACTED] "if I get poked with anything, I'm slamming you on your fucking head." Lee wrote that following the pat down search, Patterson placed the subject into handcuffs and walked him to a patrol car and had him sit in the back seat. Malec told Lee that at no time did Patterson say anything to the subject; such as he was under arrest or that he was being detained. Malec described the subject as being animated but not an officer safety hazard. He told Lee that he felt that Patterson's actions were inappropriate.

Sergeant Lee wrote that he checked for field interview reports from Patterson and learned that he did not complete the required documentation following the handcuffing of a subject. He cited EPD Policy section 354.2.3 (Handcuff Policy): "When an individual is handcuffed and released without an arrest, a written report of the incident shall be made to document the details of the detention and need for use of handcuffs." (Exhibit 33)

STATEMENTS - WITNESS OFFICERS

Sergeant Richard Lee

On May 5, 2014, I met with Sergeant Richard Lee to interview him regarding possible policy violations on the part of Officer Patterson. I read administrative admonishments to Lee prior to and at the conclusion of the interview.

In order to have a better understanding of the location of this incident, I showed Sergeant Lee a BING Map of 40th Street and San Pablo Avenue (Exhibit 6). He pointed out Black and White Liquors and the 7-Eleven buildings.

I asked Sergeant Lee if he was aware if surveillance video was obtained from the area for the time of the incident. He said that he didn't believe that they checked the video. I asked if he knew if Black and White Liquors retained their video footage and he said that he believed that they purge their videos often. He agreed to stop by Black and White and inquire if they might have video from that day.

On June 6, 2014, Sergeant Lee informed me that he stopped by Black and White and that the owner was going to check the surveillance video for that date. However, he indicated, that Commander Quan had told him that she had someone check the store's video and there was nothing found that was related to the incident.

Sergeant Lee said that this incident involved homeless people causing a disturbance and dumping the trash can in front of Black and White. He said when the call came out he was at the station. He heard Officer Patterson answer up and take the role of primary officer and Malec covered him. Lee said he then recalled that they cleared the call with a disposition that the homeless were asked to leave the area.

Between 30 and 60 minutes following the disposition of the call, Officer Malec approached Lee at the station. Malec told him that at the time of the call, they made contact with one of the responsible parties and Patterson conducted a search of [REDACTED] and handcuffed him. Sergeant Lee couldn't recall if Malec indicated that it was a pat down search or a full search, but Malec expressed concern that

the search and the handcuffing were not justified. Malec said the subject was loud, but cooperating. He didn't feel that he was presenting an officer safety concern and at that time he wasn't under arrest; just being detained.

Malec told Lee that Patterson asked [REDACTED] if he had anything sharp on him and [REDACTED] didn't answer. Malec then asked Norris if he had anything sharp on him that would poke Officer Patterson; [REDACTED] [REDACTED] replied that he did not. He said that Officer Patterson then made a comment saying, "If I get poked with anything, I am going to slam you on your fucking head". Malec felt that Patterson's comment was inappropriate.

Malec also reported that Patterson handcuffed [REDACTED] and moved him to the patrol car without telling him he was in custody or being detained. When the officers were finished with the investigation, they removed the handcuffs and released him.

Lee said his concerns were that Patterson may have unlawfully detained the subject, he made unprofessional threats to the subject, and he handcuffed him. He told me that it is required that a report be completed whenever anyone is handcuffed. Lee checked and verified that Officer Patterson did not document the handcuffing of [REDACTED] [REDACTED]. Lee knew that Patterson was under investigation for other allegations of misconduct at that time, so he didn't look into the allegations any further. However, he did complete a memorandum to Commander Quan about the matter (Exhibit 1).

Lee informed me that it is routine procedure for an officer to run a warrant check on someone being detained, but to his knowledge Patterson did not ask for that check.

He said that two other officers were across the street, but he didn't know if they had witnessed anything; they never approached him.

Officer Jared Malec

On May 14, 2014 at about 2143 hours, I met with Officer Malec at the Emeryville Police Department to conduct an interview regarding this incident. I read administrative admonishments to Officer Malec prior to and at the conclusion of the interview.

Officer Malec stated that he was in the area about 5-10 minutes prior to the call of the disturbance. A transient threw a garbage can into the street and Officer Malec spoke with a Black and White employee and was told that he didn't want anything done. Earlier Malec had spoken with the two transients involved; [REDACTED]. He said he knows both men from prior contacts.

When dispatch put the call out, he said that the description and clothing of one of the men matched [REDACTED]. He said that he believed [REDACTED] was intoxicated but not to the point of being a danger to himself or others.

Officer Malec said that when he arrived Patterson was at the store speaking with the reporting party. So Malec made contact with [REDACTED] and began speaking with him about his role in the disturbance. Officer Patterson then came over to where Malec and [REDACTED] were standing. Patterson didn't say a word to Malec and just began speaking with [REDACTED]. At about that time he said two other officers had made contact with the second subject [REDACTED], in front of the 7 Eleven store across the street. Malec said that Patterson "almost automatically" began to search [REDACTED]. He believes Patterson asked

█████ for his ID, and remembers seeing █████ wallet on the ground. He couldn't recall how it got there.

█████ was talking instead of responding to Patterson's request for ID and Patterson decided to search him. Malec said that Patterson went into █████ pockets, making his actions a search vs a frisk or pat down. Just prior to the search, Patterson threatened █████ saying, "If anything is going to poke me or stick me I'm going to fucking slam your head into the concrete." Malec then told me that he wasn't certain about the exact text of Patterson's comments, but he said that he was absolutely certain that the "F-word" was used by Patterson and that he used the phrase, "head into the concrete". Patterson searched █████ handcuffed him and then walked him about 20 feet to a patrol car, where he placed █████ into the backseat. Malec said that he doesn't believe Patterson conducted a records check on █████ and he never told him he was being detained and/or arrested.

He said that after securing █████ in the patrol car, Patterson went to talk to the other officers and Malec went to speak with █████ at the car. Patterson came back to the car and released █████

Officer Malec said during the interview that when you put someone in cuffs, move him and put him in the back of a car, it is technically an arrest. Malec didn't say anything to Patterson at the time, but he had a problem with the cuffs, transportation and the language. He didn't want to get into it with Patterson in public, so he opted to speak with Sergeant Lee. Malec said that the arrest wouldn't have been much of an issue for him, if Patterson was arresting him for public intoxication. But just to release him after all that, he said he felt it was wrong. He said that an 849b Penal Code release wasn't even completed.

Malec said that Patterson didn't have justification to go into █████ pockets. He does not believe that Patterson had knowledge that Norris had a search clause and he wasn't searching him incident to an arrest. He went on to say that there wasn't any indication that █████ had any weapons on him. He said there weren't any bulges in his clothing or any other indication that he was armed. Additionally, Malec said that █████ did not give Patterson any reason to use profanity and threaten him.

I asked Malec if policy dictated that some form of report must be written. He said anytime anyone is handcuffed, the officer is required to create a field contact report. But with the search and movement of █████ Malec felt that Patterson should have minimally written an arrest report and an 849b PC report.

Officer Anthony Abogado

I met with Officer Abogado at the Emeryville Police Department on May 15, 2014. I read administrative admonishments to Abogado prior to and at the conclusion of the interview (Exhibit 41). At the start of the interview, I provided him with a synopsis of the call for service. Abogado told me that he didn't recall the incident, saying, "It sounds like a lot of situations that we had previously in the year."

Officer Kyle Rice

On June 25, 2014 I met with Officer Rice at the Emeryville Police Department to determine what he might recall about this incident. I read administrative admonishments to Rice prior to and at the conclusion of the interview.

I briefly explained the incident to Officer Rice, but he was having a difficult time recalling it. He said that the department responds to that area of the city for similar calls all the time. I provided him with a few

more details at which time he said he believed that he did recall the incident. Officer Rice told me that upon his arrival he saw Officers Patterson and Malec at Black and White Liquors with an individual. He said that Abogado arrived in the area just before he did. Rice saw Abogado was alone with a person known to him as [REDACTED]. Rice drove to Abogado's location, at the bus stop in front of the 7 Eleven store to assist him since he was alone with [REDACTED]

Rice said that he believes he saw Patterson, Malec and [REDACTED] speaking on the sidewalk in front of the liquor store, but they were too far away to hear what was being said. He also said that he didn't see anyone handcuff, search or move [REDACTED] to a patrol car. He did remember that Officer Patterson walked over and spoke with [REDACTED] but couldn't recall that extent of that conversation. Officer Rice had no more information regarding this incident.

STATEMENT - SUBJECT OFFICER

Officer Joshua Patterson

On July 8, 2014 at 0840 hours, Commander Quan and I met with Officer Patterson and his representative, Justin Buffington, ESQ with the law firm of Rains Lucia Stern. I read Patterson an administrative admonition (Exhibit 44) and a Miranda Admonition (Exhibit 45). Mr. Patterson refused to waive his rights, so I then read him the Lybarger Admonition (Exhibit 46), which compelled him to answer all of our questions. Finally, prior to beginning the interview, I read a list of pre-interview administrative statement (Exhibit 47), which covered many of his rights as they pertained to the interview as outlined in Government Code §3300-3313 and a statement as to Emeryville's position related to harassment, discrimination and retaliation. I closed the interview by reading him a closing admonition (Exhibit 49). I had Officer Patterson sign and date the different admonition forms. The interview in its entirety was audio recorded; a copy of the transcripts are attached (Exhibit 48).

I provided Officer Patterson with a brief overview of the call for service, which included the fact that two transients, [REDACTED], were throwing trash into the street and bothering customers at the Black and White Liquor store. I asked if he was familiar with either for the men and he said that he was familiar with [REDACTED] but not [REDACTED]. I provided him with photos of the two men (Exhibits 4 & 5) and he again said that he recognized Fontonette, but not [REDACTED]. I provided additional information that included the identities of the three officers who responded as cover: Officers Malec, Rice and Abogado; and told him that while he spoke with the store employee, Officer Malec had detained [REDACTED] near the Black and White and Officers Abogado and Rice detained [REDACTED] near the 7 Eleven store across the street. Patterson continued to state that he didn't recall the incident. I told him that he had a conversation with [REDACTED] conducted a search of him which included going through his pockets and commented that he was concerned about being stuck during the search and moved him to the back seat of a patrol car.

Patterson told us that the scenario didn't ring a bell and said usually on this type of incident, if the reporting party wanted something done, the officers would just have the involved parties move along. He said that he doesn't understand why the officers would have detained the two men, unless they were fighting. Unless they are being violent we have them sit down so that they could talk to them. He again said that he didn't understand why both of them would be detained.

He said if he was going to put [REDACTED] into his car he would make certain that he didn't have any weapons; because that he doesn't put anyone into his car without first making sure they have no weapons.

He again went back to the statement that he was confused why they were both detained. He said there must have been something else involved for the other officers to detain them. Unless their demeanor was violent or combative, he couldn't understand why they were detained by the other officers. I told him that I didn't understand about his concern about the cover officers detaining [REDACTED] and [REDACTED]. He then he didn't know why THEY detained them in handcuffs. When I told him that the officers didn't handcuff them, they simply detained them. I told him that I was informed that he handcuffed [REDACTED] after searching him and placed him in a patrol car. He then went across the street to speak with the other officers and/or [REDACTED] then returned and released [REDACTED]. He said that it didn't ring a bell.

I asked him if when detaining someone in a car if he would place the individual in handcuffs. He said, if there was a need for further investigation he would detain someone in handcuffs and place him into the car. He then quickly said no he would just place the person in the car and that there is no need to handcuff for that reason. He said he would normally do that even with the presence and assistance of additional officers. It is more for the safety of the individual he has detained. He wouldn't want them to dart out in front of traffic.

In hopes of jogging Patterson's memory, I told him that it had been alleged that he told [REDACTED] something to the effect of; "if I get poked I'm going to slam your F'ing head into the ground." Patterson responded by saying, "I don't recall saying that." "I give somebody a chance, to make sure you don't have any needles, I don't want to get poked." "But not saying anything like that." He said he wouldn't have used profanity for something like that. I asked if it was ever appropriate for an officer to use profanity when coming in contact with someone on the street. He replied "No it shouldn't be, no. I try at all times to try and be civil with folks."

In regards to this incident, Patterson said that he does not recall using profanity towards [REDACTED]. He said he has a very good way of talking to people and that it generally is not necessary to use profanity. In response to a question from Commander Quan of when it would be appropriate to use profanity; he stated that it wouldn't be appropriate at any time.

I asked Patterson, given the situation as I had relayed it, if he would have documented the contact. He said, yes there should have been a FC (field contact card) done at least.

Officer Patterson told us that there should have been an FC at least if something as I described had occurred. He said that the FC entry might have read, Contacted [REDACTED] at Black and White, detained for safety during investigation released when it was determined that no crime had occurred. He said if handcuffed, he would have included that information on the FC.

I asked in follow up questions that if someone is detained without handcuffs if a FC was required? He stated that it was not. I then asked would it be required if handcuffs were used and he responded by saying, "An FC should be done, if handcuffs are used – should be." I asked if the FC would include a statement that handcuffs were used. He responded by saying, "it should, right it should."

I asked Patterson to tell us the difference between a pat down and a search of a person. He said that a pat down is a check for weapons; "common areas", waistbands; depending on the clothing pockets of jackets, but unless you felt something that appeared to be a weapon an officer is not to go into the pockets. He said that a pat down would be conducted if someone was to be detained while investigating, wearing bigger clothing, the nature of the person's demeanor, the nature of the crime,

etc. He described a search of a person as something that would be incident to an arrest or a probation search. A search would entail searching a person's pockets without first having a belief that the person is armed.

ADMINISTRATIVE INSIGHT

Although, the allegations regarding this incident come from one person, the reporting party is quite credible. Officer Malec went to Sergeant Lee within 30 minutes of clearing the call for service to report his concerns. During his interview, Officer Malec presented as a professional officer who cares about the reputation of EPD and policing in general. He was forthcoming with the fact that he doesn't particularly care for Officer Patterson's policing style. However, he doesn't appear to be someone who is vindictive or looking to harm a fellow officer's reputation. I am informed by staff that Malec is very proactive and is not one to stretch the limits of policies, rules or the law. He is considered a very trustworthy and honest officer.

Officer Malec's recollection of the call that evening is very clear and detailed; in contrast to that of Officer Patterson's. Patterson was the primary officer on the call and claims that he doesn't have any recollection of the call for service. The date of this event was March 9, 2014 three months and a day from the date of his interview. This investigative report includes two other incidents involving Officer Patterson. Each of the two incidents occurred at an earlier date than this one and yet the most recent incident is the one that Officer Patterson does not recall. The other incidents took place on December 20, 2013 and August 16, 2013.

I find it curious that Officer Rice, who was not able to provide any information as to the allegations of the investigation of this incident, was able to recall more specifics than Officer Patterson who was the primary officer.

According to Officer Malec, Patterson didn't communicate with him at all. He didn't bother to ask if he searched [REDACTED] or if he had any other information about him. Officer Patterson spoke directly to [REDACTED] and began a search of his pockets, apparently assuming that he may be carrying drug paraphernalia. Patterson admitted in his interview that he didn't recall Norris and knew nothing about him. I have learned through department staff that [REDACTED] does not have any history of injectable drug use.

Officer Patterson said that he would normally conduct a pat down search of a person and put them into his car for safety. I question why that would be necessary when Officer Malec didn't find it necessary to secure [REDACTED] and there was no indication that the second subject, [REDACTED] was handcuffed or secured in either Abogado's or Rice's cars.

Patterson displayed a pattern of talking around questions during his interview. He became focused on his perception that the cover officers detained [REDACTED] and [REDACTED] in handcuffs and used it to deflect many of our questions. Also Commander Quan asked him if he were to put a person in the back of a patrol car if that would constitute a detention. He responded by saying that he would tell the person that he was not free to leave, not handcuffed just placed in the car. He continued saying that "We" say you're not under arrest. "We" are just trying to figure out what's going on, have a seat here and "we" will be back in a minute. She asked the question again and he finally replied by saying that it was dependent on the persons demeanor.

A records search was completed by EPD staff to determine if this incident was documented in any form and it was not. Through an administrative inquiry, it was determined that Officer Patterson did not conduct a records check on either [REDACTED]

FINDINGS

1. Violation of Emeryville Police Department Policy Manual Section 300.4 - REPORTING THE USE OF FORCE

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

As stated earlier, Officer Malec provided information within 30 minutes of the conclusion of this incident. There has not been any testimony that would indicate that what he reported did not occur. Officer Patterson did not deny any of the allegations of misconduct. He simply stated that he did not recall the incident or that it wasn't what he would normally do.

Officer Patterson searched, handcuffed and then moved [REDACTED] to the back seat of a patrol car and eventually released him from custody. There was no documentation of Officer Patterson's actions. Per EPD Policy § 354.2 the use of handcuffs is considered a use of force. Even if Patterson had justification to handcuff [REDACTED], he violated department policy by failing to document the handcuffing in a police report and/or field contact (FC).

2. Violation of Emeryville Police Department Policy Manual Section 354.2.3 - HANDCUFFING OF DETAINEES

Situations may arise where it may be reasonable to handcuff an individual who may, after subsequent investigation, be released prior to arrest. Such a situation is considered a detention, rather than an actual arrest. Unless arrested, the use of handcuffs on detainees should continue for only as long as is reasonably necessary to assure the safety of officers and others. Officers should continuously weigh the safety interests at hand against the intrusion upon the detainee when deciding to remove handcuffs from a detainee. When an individual is handcuffed and released without an arrest, a written report of the incident shall be made to document the details of the detention and need for use of handcuffs.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

There has not been any testimony that would indicate that what Officer Malec reported did not occur. Officer Patterson did not deny any of the allegations of misconduct. He simply stated that he did not recall the incident or that it wasn't what he would normally do.

Officer Malec was adamant that [REDACTED] did not pose a risk or raise a concern that he was a danger to himself. It does not appear that a reasonable officer would find sufficient justification to handcuff him.

Officer Patterson searched, handcuffed and then moved [REDACTED] to the back seat of a patrol car and eventually released him from custody. There was no documentation of Officer Patterson's actions. Even if Patterson had justification to handcuff [REDACTED] he violated department policy in not documenting the handcuffing in a police report and/or field contact (FC).

3. Violation of Emeryville Police Department Policy Manual Section 440.4 – PAT DOWN SEARCHES

A pat down search of a detained subject may be conducted whenever an officer reasonably believes that the person may possess an object that can be utilized as an offensive weapon or whenever the officer has a reasonable fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to the following:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
- (e) The appearance and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

Staff checked to determine if Officer Patterson may have run a criminal history check on [REDACTED] and it was determined that he did not. He didn't speak with Officer Malec who has had prior contact with [REDACTED] and could have provided him with pertinent information or he could have simply asked for consent from [REDACTED] to conduct a pat down search.

Through Officer Patterson's interview it is apparent that he understands policy which outlines when a pat down is appropriate. Given Officer Malec's observation and timely report of Patterson's actions to Sergeant Lee, it seems that Patterson did not have justification as outlined in policy, to conduct either a search or a pat down of [REDACTED]

4. Violation of Emeryville Police Department Manual of Regulations Section 05.02 – CONDUCT TOWARD OTHERS

The Police Department exists to serve the public safety needs of all persons within the jurisdiction of the City. Accordingly, it is the fundamental policy of the Department that members and employees shall treat all persons with courtesy and respect. Discrimination or racism in any form shall never be tolerated.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

According to Officer Malec, Officer Patterson used profanity towards [REDACTED] and threatening harm to him if he was stuck when searching him.

During the interview, Officer Patterson said that he does not recall using profanity towards [REDACTED]. He said he has a very good way of talking to people and that generally it is not necessary to use profanity.

Again, Officer Patterson didn't deny that he didn't threaten [REDACTED] and used profanity, only that he tries to treat everyone with respect and that he didn't recall the incident.

Based on Malec's timely reporting and demonstration of credibility, there is no reason that would suggest that Officer Malec is providing false information regarding Patterson's actions.

5. Violation of Emeryville Police Department Manual of Regulations Section 05.04 – RUDE CONDUCT – CITIZENRY

Member and employees shall perform their duties attentively and courteously, avoiding rude, threatening, harsh insulting, profane, insolent or demeaning language, and they shall maintain a professional bearing regardless of provocation to do otherwise.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

Per Officer Malec he witnessed Officer Patterson use profanity toward [REDACTED] prior to searching him. Officer Patterson said that he does not recall using profanity towards [REDACTED]. He said he has a very good way of talking to people and that generally it is not necessary to use profanity.

Mr. Patterson did not deny his use of the word and only said that he tries to treat everyone with respect and didn't recall the incident.

6. Violation of Emeryville Police Department Manual of Regulations Section 05.10 – GENERAL ON-DUTY RESPONSIBILITIES

Within the City of Emeryville, while on duty, members shall at all times take appropriate action to meet the requirements set forth in the Department Mission and Vales Statements. Members and employees shall at all times respond to lawful orders of superior officers, and other proper authorities as well as calls for police assistance from citizens. Proper police action shall be taken whenever it is required.

General Mission of the Police Department (in part)

Protect the Constitutional Rights of all individuals.

Taking those steps necessary to promote order, but in a fashion that is least intrusive into the lives of the citizens.

Department Values Statement (in part)

We will take that action which is least obtrusive in the Lives of the Citizenry.

Whenever possible, we will reason with individuals in the enforcement setting before resorting to the use of force, or effecting an arrest. Our purpose is to maintain order. We recognize that it is the domain of the Courts to punish person convicted of an offense.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

Through the actions of Officer Patterson, in which he searched [REDACTED], handcuffed him and moved him to a patrol car approximately 20 feet away, he effectively arrested him. At no time did Patterson advise [REDACTED] or have an articulable reason as to reasonable or probable cause for his actions. He therefore violated [REDACTED] constitutional rights which protect him from such an unlawful search and seizure of his person.

Clearly Patterson failed to take those steps that were least intrusive and obtrusive in the life of [REDACTED]. He could have spoken with Officer Malec to determine what he knew of [REDACTED] or if he had searched him, yet he failed to take rudimentary steps to determine if there was just and reasonable cause to conduct a search, handcuff and secure [REDACTED] in the back of a patrol car. Per Officer Malec's statement, Patterson failed to appropriately communicate with [REDACTED] and provide a reason before resorting to force (handcuffing) and affecting an arrest.

7. Violation of Emeryville Police Department Manual of Regulations Section 05.17 – PERFORMANCE OF DUTY

All members and employees shall perform their duties as required by the Mission and Values Statements, or directed by law, Department rule, policy or primary directive, or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as direct, notwithstanding the general assignment of duties and responsibilities.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Patterson's actions as described above violated this section of the Department's Manual of Regulations. His use of profanity; handcuffing [REDACTED], effecting an arrest without probable cause to believe a crime had been committed, failing to document the arrest and use of handcuffs are all performance of duty issues and a violation of this section of the Manual of Regulations.

8. Violation of Emeryville Police Department Manual of Regulations Section 06.10 – REPORTING
Members and employees, consistent with State law, shall promptly submit such reports as are required by the performance of their duties, or by competent authority.

SUSTAINED – The investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

A records search was completed by EPD staff to determine if this incident was documented in any form and it was not. Through an administrative inquiry, it was determined that Officer Patterson did not conduct a records check on either [REDACTED]

Officer Patterson did not complete a report as required to document the handcuffing of [REDACTED]. Nor did he complete a report per California Penal Code § 849b, when releasing him from his custody without charges.

9. Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

B. Incompetence, unsatisfactory performance, or neglect of duty.

A records search was completed by EPD staff to determine if this incident was documented in any form and it was not. Through an administrative inquiry, it was determined that Officer Patterson did not conduct a records check on either [REDACTED]

Officer Patterson did not complete a report as required to document the handcuffing of [REDACTED]. Nor did he complete a report per California Penal Code § 849b, when releasing him from his custody without charges. Ostensibly Officer Patterson violated [REDACTED] Constitutional Rights.

Officer Patterson's failure to properly document his contact and interaction with [REDACTED] demonstrates an unsatisfactory performance and/or lack of duty.

10. Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

J. Discourteous treatment of public or other City Staff

Per Officer Malec, he witnessed Officer Patterson use profanity and threatened to harm [REDACTED] prior to searching him. Officer Patterson said that he does not recall using profanity towards [REDACTED]. He said he has a very good way of talking to people and that generally it is not necessary to use profanity. He tries to treat everyone with respect and didn't recall the incident.

Using a profanity laced threat toward [REDACTED] demonstrated he was discourteous in the treatment of the public.

11. Violation of Emeryville Personnel Rules & Regulations Section 11.01 – CAUSES FOR DISCIPLINARY ACTION

Q. Unauthorized use of City uniforms, insignia, identification, authority or discretion.

Through Officer Patterson's actions he used unauthorized discretion and authority when he used a vulgarity laced threat of harm toward [REDACTED]; violated his Constitutional Rights when searched, handcuffed, transported and confined him in the backseat of a patrol car.



[REDACTED]
[REDACTED]
[REDACTED] - [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

Incident 3

August 16, 2013

██████████ - 5150/647f/5150

INCIDENT 3

<u>Date of Occurrence</u>	<u>Location</u>	<u>EPD Event/Case Number and Description of Incident</u>
August 16, 2013	Black and White Liquors 4051 San Pablo Avenue Emeryville, CA	1308-1698: Arrest/5150 Hold of [REDACTED]

SUMMARY OF ALLEGATIONS

1. Officer Patterson used excessive force in the detention/arrest of [REDACTED]

Violation of Emeryville Police Department Policy Manual Section 300.2 - USE OF FORCE

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.

2. Officer Patterson failed to document physical force used to detain/arrest [REDACTED]

Violation of Emeryville Police Department Policy Manual Section 300.4 - REPORTING THE USE OF FORCE

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

3. Officer Patterson failed to notify his supervisor of the use of force when detaining [REDACTED]

Violation of Emeryville Police Department Policy Manual Section 300.4.1 - NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practical following the application of any force described in this order.

4. Officer Patterson made a false report orally to his supervisor in regards to the detention/arrest of [REDACTED]

Violation of Emeryville Police Department Policy Manual Section 344.1.1 - REPORT PREPARATION

Employees shall not repress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

5. Officer Patterson failed to document a crime as required by policy

Violation of Emeryville Police Department Policy Manual Section 344.2.1 - CRIMINAL ACTIVITY REPORTING

When an employee responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the employee is required to document the

activity. The fact that a victim is not desirous of prosecution is not an exception to documenting a report. The following are examples of required documentation:

(b) In every instance where a misdemeanor crime has occurred... If the victim does not desire a report, the incident will be recorded on the dispatcher's log.

6. Officer Patterson failed to document that force was used against [REDACTED]

Violation of Emeryville Police Department Policy Manual Section 344.2.1 - CRIMINAL ACTIVITY REPORTING

When an employee responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the employee is required to document the activity. The fact that a victim is not desirous of prosecution is not an exception to documenting a report. The following are examples of required documentation:

(c) In every case where any force is used against any person by police personnel.

7. Officer Patterson failed to perform his duty as required

Violation of Emeryville Police Department Manual of Regulations Section 05.17 - PERFORMANCE OF DUTY

All members and employees shall perform their duties as required by the Mission and Values Statements, or directed by law, Department rule, policy or primary directive, or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.

8. Officer Patterson failed to promptly submit required use of force and handcuffing report(s) of [REDACTED]

Violation of Emeryville Police Department Manual of Regulations Section 06.10 - REPORTING

Members and employees, consistent with State law, shall promptly submit such reports as are required by the performance of their duties, or by competent authority.

9. Officer Patterson used excessive physical force when detaining/arresting [REDACTED]

Violation of Emeryville Police Department Manual of Regulations Section 11.05 - USE OF PHYSICAL FORCE

The use of physical force shall be restricted to the circumstance permitted by Department directives, specified by law, and to the degree necessary for the accomplishment of a police task. Malicious assaults or batteries committed by member or employees constitute gross misconduct.

10. Officer Patterson demonstrated unsatisfactory and neglect of duty in his failure to document and notify his supervisor of the use of force and handcuffing of [REDACTED]

Violation of City of Emeryville Personnel Rules & Regulations SECTION 11.01 - CAUSES FOR DISCIPLINARY ACTION

B. Incompetence, unsatisfactory performance, or neglect of duty.

11. Officer Patterson was dishonest in responding to his supervisor's inquiry as to the use of force when detaining/arresting [REDACTED]

Violation of City of Emeryville Personnel Rules & Regulations SECTION 11.01 - CAUSES FOR DISCIPLINARY ACTION

E. Dishonesty, theft

INCIDENT SYNOPSIS

The following synopsis has been gleaned from the department's dispatch "Event Record" baring Event#/Case # 1308-1698 (Exhibit 18), Radio and Telephone Transcript labeled: RADIO TRANSMISSION OF August 16 (Exhibit 19), 5150 W&I Report (Exhibit 21), copy of a Consolidated Arrest Report (CAR) baring Report Number 13081698 (Exhibit 23) and Memorandum from Sergeant Richard Lee to Commander Quan dated August 17, 2013 (Exhibit 17).

This incident involved a disturbance between two transients in the area of Black and White Liquors located at 4051 San Pablo Avenue, Emeryville CA. Officer Patterson advised dispatch that he was on a "walking stop" at the south end of Black and White Liquors at approximately 2233 hours. A few minutes later, Officer Patterson advised that he has one person detained for 5150 W&I – extreme intoxication and requested an ambulance be dispatched for transportation. At about 2243 hours, Officer Patterson told dispatch to cancel the ambulance and advised that the subject, later identified as [REDACTED] was being arrested for Penal Code § 647f (Public Intoxication) and that he would be en route to the North County Jail.

At about 2324 hours, after arriving at North County Jail, Officer Patterson requested that dispatch send an ambulance to the jail. [REDACTED] was unable to answer questions and was being placed on a 5150 hold. At about 2342 hours, Patterson advised that the ambulance was en route to the hospital with [REDACTED]

According to a memorandum (Exhibit 17) written by Sergeant R. Lee; Officer Rojas met with him at the police department during the shift. Rojas explained to Lee that he had responded to cover Officer Patterson on the disturbance call and saw him kneeling on [REDACTED] who was lying on the ground and handcuffed. Rojas asked Patterson what had happened and why he had "to take [REDACTED] down". Rojas said that Patterson said that he only used controlling force. Rojas told Lee that he didn't feel that [REDACTED] meet the criteria for a 5150 hold and advised Patterson to arrest [REDACTED] for public intoxication.

Based the conversation with Officer Rojas Sergeant Lee went to Black and White Liquor to review the store's surveillance tapes. He was concerned that he may need to complete an UIR. Sergeant Lee wrote in the memorandum that the video showed Officer Patterson met [REDACTED] in front of the store and attempted to place him in a control hold. [REDACTED] could be seen pulling away from Patterson. Officer Patterson can be seen grabbing [REDACTED] with his left arm, push him against the wall of the building, wrapping his left arm around [REDACTED] neck and forcing him backwards to the ground. Lee indicated that he was not able to obtain copies of the surveillance videos at that time (Exhibits C, D & E), but he had Sergeant Cassianos do so at a later time.

Later that shift Officer Patterson had not contacted Sergeant Lee, so he called Patterson to the station and spoke with him regarding this incident. Lee asked him if he (Lee) needed to complete an UIR.

Patterson told him that he contacted a drunk and had him sit down. He had him put his hands behind his back and cuffed him. Lee wrote that he asked Officer Patterson if he used any force and was told that he did not.

Lee believed that Officer Patterson violated department policy by failing to report the use of force and failing to notify his supervisor.

The submitted 5150 report and supplemental reports which were completed by PST Hughes and Officer Patterson never mention the initial arrest for 647f or the use of handcuffs. The original CAR (647f report) that was completed by Officer Patterson was found in the shred box located in the department's lineup room by Captain Diotalevi.

STATEMENTS - WITNESS OFFICERS

Sergeant Richard Lee

On April 28, 2014 I met with Emeryville Police Department (EPD) Sergeant Richard Lee to interview him regarding possible policy violations on the part of Officer Joshua Patterson. I read administrative admonishments to Lee prior to and at the conclusion of the interview.

Sergeant Lee has spent his entire 15 year career as a peace officer with the Emeryville Police Department. During his time with the department he has been a Field Training Officer (FTO), is presently one of the department's defensive tactics instructors and a patrol supervisor. He along with four patrol officers: Kyle Rice, Joshua Patterson, Jared Malec and Anthony Abogado are assigned to the Fifth Patrol Team which is scheduled to work Thursdays, Fridays, and Saturdays from 2022 hrs. and through 0600 hrs. and Sundays from 1400 hrs. through midnight. His team overlaps with officers from the Third Patrol Team on Thursdays, Fridays and Saturdays. Sergeant Lee informed me that by practice sergeants are required to document violations of policy via memorandum and forward the information to the department's command staff for their disposition. EPD sergeants do not conduct internal affairs investigations.

Sergeant Lee said that on the August 16, 2013 he was functioning as an acting sergeant. He was in the police station when he heard Officer Patterson advised Emeryville Police dispatch by radio that he was making a "walking stop" at approximately 2233 hrs. on the south side of Black and White Liquors. Officer Pablo Rojas radioed that he was en route to cover Patterson.

Officer Patterson drove the arrestee, [REDACTED], to the North County Jail in Oakland. Once Patterson left with [REDACTED] Officer Rojas drove to the station to speak with Sergeant Lee. Rojas told Lee that he had concerns with the way Patterson handled the arrest. He explained that when he arrived at the scene, he saw Officer Patterson kneeling on the upper back of [REDACTED] who was face down on the ground. When he asked Patterson what had happened; Patterson told him that he used "controlling force" to place the subject under arrest. Initially, Patterson informed Rojas that he was going to place [REDACTED] on a 5150 hold. Rojas said he told Patterson that [REDACTED] didn't meet the criteria for a 5150 hold and that he should be arrested for drunk in public.

The more important issue for Rojas was that he felt Patterson used more than just "controlling force". Lee told me that when Rojas came upon Patterson and saw him kneeling on [REDACTED] he believed that Patterson had used force that department policy would require him to notify the sergeant.

Sergeant Lee explained that "controlling force" is not a term officially recognized by the department, but that it would be similar to restraining someone or guiding him/her to the ground. I knew that Sergeant Lee had viewed the surveillance video and I asked if he would consider Patterson's actions depicted in the video to be more than just "controlling force". The sergeant said that he would and he would expect Patterson to have notified him of the incident.

After hearing the concerns of Rojas, Sergeant Lee drove to Black and White Liquor and viewed the store's surveillance videos. Lee said that the videos depicted the following:

Patterson is driving down the 40th Street. He makes a U-turn and contacts an unidentified person on the south side of Black and White Liquor. He said that Patterson can be seen speaking with the unidentified person at the corner and then they walk to the front of the store. Once there they came upon a person, [REDACTED] leaving the store. In the video it appears that Patterson attempts to detain [REDACTED] by grasping his right arm. [REDACTED] pulled away from the officer, who then grabs hold of [REDACTED] left arm and pushes him to the wall. Patterson takes his other hand and wraps his arm around [REDACTED] neck and forces him to the ground.

Lee described Patterson's action as a use of force. He said he could see Patterson with his knee on the upper portion of [REDACTED] back as described to him by Rojas.

Sergeant Lee went on to tell me he learned that while Patterson was at the jail, [REDACTED] wouldn't answer any of the medical questions asked by the jail staff. As a matter of acceptable departmental practice, Patterson then placed [REDACTED] on a 5150 hold. An ambulance was summoned, an emergency psychiatric hold report was completed and the [REDACTED] was transported to the hospital for intoxication.

A short time later, Sergeant Lee had Patterson return to the station. He wanted to speak to him about the [REDACTED] arrest as well as an earlier call for service. Upon Patterson's arrival Lee asked him what happened and if he (Lee) needed to complete an UIR.

Lee explained, per policy that an officer must inform a supervisor when the officer has used a level of force that amounts to more than is necessary to simply control the movements of a person. Once that notification is made it is incumbent on the supervisor to document the officer's actions in an UIR.

Lee said that Patterson told him that he contacted a drunk, told him to turn around, sit down and place his hands behind his back; and then he handcuffed him. Sergeant Lee said he asked Patterson if he used force and Patterson replied that he did not. Sergeant Lee did not challenge Patterson on his statement, as he felt the officer violated department policy and he didn't want to infringe on Patterson's rights under the California Peace Officer Bill of Rights. Sergeant Lee wrote a memorandum to Commander Quan, dated August 17, 2013 (Exhibit 17).

On May 5, 2014, I met with Sergeant Lee to show him video footage from Black and White Liquor, which I received from Commander Quan (Exhibits C, D & E). Lee confirmed that it was the same footage that he had reviewed the night of August 16, 2013. There are three camera angles included on the CD.

The video labeled **South 40th St.** (Exhibit C) was the first of three videos viewed. Sergeant Lee pointed out that two individuals at the corner appear to be fighting (timestamp: 08/16/2013 - 22:30:00). As the video continues one of the two subjects walks around the corner (timestamp: 08/16/2013 - 22:31:05). A patrol car travelling eastbound, can be seen negotiating a U-turn (timestamp: 08/16/2013 - 22:31:30)

and an officer, identified as Officer Patterson by Sergeant Lee, is seen exiting the patrol car and approaching an unidentified person on the south side of the store (timestamp: 08/16/2013 - 22:31:42). The video is of poor quality, but Lee is certain that the officer depicted in the video is Patterson. The timestamps on the video would support Sergeant Lee's assertion. A short time later, the officer and the unidentified person are seen talking and walk around the corner (eastbound to northbound). The video ends at that point.

The next video footage viewed is labeled *Inside B&W* (Exhibit D). In that video [REDACTED] can be seen entering Black and White Liquor (timestamp: 08/16/2013 - 22:31:15). Eventually, [REDACTED] walks toward the rear of the store out of camera view, but returns where he has a short verbal confrontation with the store clerk and then walks toward the front door. Officer Patterson can be seen walking from the right of the screen and contacting [REDACTED] at the threshold of the store (timestamp: 08/16/2013 - 22:33:16). The store clerk follows [REDACTED] to the door and appears to be speaking in the direction of Patterson and [REDACTED] [REDACTED] walks past Patterson and the two of them walk to the left, outside camera view.

The third video labeled *IFO B&W* (Exhibit E) depicts [REDACTED] entering the store (timestamp: 08/16/2013 - 22:31:13). Officer Patterson and the unidentified person can be seen walking to the front door and eventually making contact with [REDACTED] as he is leaving (timestamp: 08/16/2013 - 22:33:23). Patterson takes hold of [REDACTED] arm (timestamp: 08/16/2013 - 22:33:28), but [REDACTED] appears to casually turn out of Patterson's grasp. Patterson again, takes hold of [REDACTED] arm as he walks away and guides him into the wall of Black and White Liquor. Patterson is then seen wrapping his left arm around [REDACTED] neck (timestamp: 08/16/2013 - 22:33:34) and pulling [REDACTED] backwards to the ground (timestamp: 08/16/2013 - 22:33:35). Once on the ground, Patterson rolled [REDACTED] onto his side and kneels on [REDACTED] back as he handcuffs him (timestamp: 08/16/2013 - 22:33:37). Patterson then stands up (timestamp: 08/16/2013 - 22:34:18) and approximately three seconds later Officer Rojas's patrol car can be seen coming into view.

I showed Sergeant Lee a copy of a Consolidated Arrest Report (CAR) (Exhibit 23). The CAR is a handwritten report baring Officer Patterson's name and serial number. It was for the drunk in public arrest of [REDACTED] on August 16, 2013. The CAR was found in the shred box located in the Lineup room by Captain Dante Diotalevi. I asked Sergeant Lee of the significance of the report being found in the box. He told me that the CAR should have been attached to the 5150 hold report (Exhibit 21) since Patterson had originally arrested [REDACTED] for public intoxication; without it the report was incomplete.

Lee informed me that he has not talked with [REDACTED] about the incident and to the best of his knowledge [REDACTED] has not made a complaint against Officer Patterson.

Officer Pablo Rojas

Officer Rojas is a department defensive tactics instructor and a Field Training Officer (FTO). He was one of Patterson's FTOs and worked with him on the street after Patterson's release from the Field Training program.

I met with Officer Rojas on May 14, 2014 to interview him regarding this incident. I read administrative admonishments to Rojas prior to and at the conclusion of the interview.

Rojas told me that he heard Patterson make a "walking stop". He was only about a block away so he advised dispatch that he would cover Officer Patterson. While en route he heard Patterson request an ambulance for a 5150 hold.

As he arrived he saw the subject, [REDACTED] lying on the ground on his stomach with his hands cuffed and Officer Patterson kneeling on [REDACTED] back preventing him from getting up. Officer Rojas told me that he asked Patterson what he could do to help. Patterson replied that the subject was drunk and that he was going to take him for 5150; as he was too drunk and the jail wouldn't accept him.

Rojas asked Patterson what happened and was told that he used controlling force. Rojas asked him to elaborate and Patterson said that [REDACTED] was trying to get away from him and that he pulled him to the ground. Rojas said given what Officer Patterson had told him, he felt that his actions were appropriate; [REDACTED] was obviously drunk, he tried to get away and he was handcuffed.

I asked Rojas if "controlling force" was a common term used by EPD officers. He said that it was, but as a department they are trying to get away from using that terminology as it is vague. He told me that "controlling force" to him would be similar to using a wrist lock when handcuffing a person.

Officer Rojas asked Patterson what he could do to help. Patterson directed him to another subject (the unidentified person seen with Patterson in the videos) who was standing nearby, and told Rojas that he had asked [REDACTED] to go inside the store and buy him a beer. [REDACTED] took the man's money and at some point one of his gloves. [REDACTED] didn't buy the beer and still had the glove. So he started to assist Patterson with the investigation of theft, and asked the subject if he wanted to pursue charges for theft. He told Rojas that he just wanted his glove and dollar back. Rojas did not identify the second subject at the scene.

Rojas said that he wasn't comfortable with Patterson placing [REDACTED] on a 5150 hold because Patterson used force in order to subdue him. Rojas said that they needed to "do their diligence" and if any kind of force was used the subject should be taken to jail. Officer Rojas said he suggested to Patterson that he arrest [REDACTED] for public intoxication for those reasons. He continued to say that he told Patterson that if at the jail the deputies refused to accept [REDACTED] he then could complete the paperwork for the 5150 hold. Additionally, Officer Rojas told me that he didn't want the department to look lazy in the eyes of the paramedics who would have transported [REDACTED] to the hospital.

I asked Officer Rojas if [REDACTED] complained about the way he was treated. He said that he did not; he just knew [REDACTED] was not happy about being arrested.

Rojas said he knows that the supervisors normally have to write an UIR for a resisting arrest case, so when he saw Sergeant Lee later in the shift he said he gave him a heads-up about Patterson's arrest. Initially, he couldn't elaborate on why he felt compelled to tell Sergeant Lee about the incident. He said it was just something that he thought Lee might want to check on. When pressed, Rojas said that Patterson knows when he is supposed to inform the supervisor of his use of force, but he is concerned that Patterson takes shortcuts and doesn't always follow policy. He went on to say that any use of force needs to be documented by the officer in some manner; regardless of how that officer defines "controlling force".

Given Rojas' position as a defensive tactics instructor, I showed him the portion of the surveillance video in which Officer Patterson confronts [REDACTED]. I asked him for his opinion given the amount of force

depicted if he felt that it was a situation that warranted supervisor notification, if the force used appeared to be appropriate and if he felt the interaction should have been documented by Patterson. Rojas said that he felt the force used appeared to be appropriate. In regards to the use of force, he felt that Patterson should have notified the sergeant and documented his actions in a report.

I asked Rojas if it is proper protocol to attach the completed CAR to the 5150 report when an officer changes the custody status of an arrestee as was done in this case. He said the officer should submit both reports.

Sergeant Andrew Cassianos

I met with Sergeant Cassianos on May 14, 2014. The purpose of the meeting was to interview Cassianos regarding his role in this incident and the second incident listed in this investigative report. I read administrative admonishments to Cassianos prior to and at the conclusion of the interview.

Ostensibly, Cassianos told me that his only involvement was in obtaining the surveillance videos from the Black and White Liquor, as requested by Sergeant Lee. I asked Cassianos if he had an opportunity to view the videos and he said that he had. I inquired as to his thoughts as to the incident based on his experience and what he saw on the videos. He told me that he felt that Patterson's use of force appeared to have been reasonable based on the circumstances as depicted by the surveillance videos.

He went on to say that the use of force was also reportable. For clarification I asked if this incident was one that would require Patterson to notify his supervisor and he responded by saying absolutely. He went on to say that every officer is aware when an UIR needs to be generated; and when there is a use of force outside of handcuffing, it is reportable. The officer must let the supervisor know that he/she did something more than just control someone's movements. It not only needs to be reported to a supervisor, it must be documented in a report that is written by the officer.

Officer Jared Malec

On May 14, 2014 at about 2143 hours, I met with Officer Malec to conduct an interview regarding this incident. I read administrative admonishments to Officer Malec prior to and at the conclusion of the interview.

Officer Malec was dispatched to cover Officer Patterson in response to a call from the ambulance company that was transporting [REDACTED]. He was acting up and attacking an ambulance crew. Malec recalled responding to the call but believes he was cancelled before he found the ambulance. He said that he didn't recall any conversation he had with Patterson regarding the call.

I asked Malec for his understanding of department procedure, practice or policy when dealing with a situation such as this. He said that the public intoxication report would be documented on the CAR and if the jail staff refused the subject for medical reasons, then the ambulance would be called for a 5150 transport. A 5150 W&I report would be completed and both reports should be turned into the department.

CIVILIAN WITNESSES

██████████ is a transient and known to the Emeryville Police Department. Emeryville Captain Diotalevi assigned a detective to locate ██████████ but he was not able to do so - see attached memorandum (Exhibit 24). Commander Quan told me that ██████████ had not filed a complaint about his treatment by Officer Patterson.

Unknown Male

As mentioned above, a civilian can be seen walking near/with Officer Patterson in the videos. This is the subject whom reportedly had given ██████████ a dollar for beer and claimed ██████████ had stolen his glove. That person has not been identified and was not interviewed.

STATEMENT - SUBJECT OFFICER

Officer Joshua Patterson

On July 8, 2014 at 0840 hours, Commander Quan and I met with Officer Patterson and his representative, Justin Buffington, ESQ with the law firm of Rains Lucia Stern. I read Patterson an administrative admonition (Exhibit 44) and a Miranda Admonition (Exhibit 45). Mr. Patterson refused to waive his rights, so I then read him the Lybarger Admonition (Exhibit 46), which compelled him to answer all of our questions. Finally, prior to beginning the interview, I read a list of pre-interview administrative statement (Exhibit 47), which covered many of his rights as they pertained to the interview as outline in Government Code §3300-3313 and a statement as to Emeryville's position related to harassment, discrimination and retaliation. I closed the interview by reading him a closing admonition (Exhibit 49). I had Officer Patterson sign and date the different admonition forms. The interview in its entirety was audio recorded; a copy of the transcripts are attached (Exhibit 48).

I provided Officer Patterson with a brief oral synopsis of the incident at Black and White Liquors on August 16, 2013. Ostensibly at approximately 2223 hours, Officer Patterson advised dispatch that he would be on a "walking stop" at the south end of Black and White Liquors on 40th Street. Approximately 12 minutes later, at about 2235 hours, Officer Patterson advised dispatch that he had one detained for 5150 W&I, extreme intoxication and requested an ambulance. The person he had detained was Elias ██████████. Officer Patterson told us that he remembers the name, but not the person. I showed him a photograph of ██████████ (Exhibit 22), at which time he indicated that he recognized him. He told us that he has had four to five different contacts with ██████████ with other "teams" during his time with EPD. Those contacts involve intoxication and/or 5150 contacts where ██████████ is disrupting business. He said ██████████ frequents Black and White and characterized him as being very violent.

Officer Patterson said that he recalled this incident, but not the reason for the stop. He said what he recalled, if it was the same incident, ██████████ was coming out of the Black and White after causing a disturbance with the employees. When ██████████ was leaving the store the employees were pointing at ██████████ as Patterson contacted him just outside the doorway.

Later in the interview, Officer Patterson said that there was a "ruckus" inside Black and White and as he drove by he could see ██████████ waving and arguing with the employees. The entrance to the Black and White is located on San Pablo Avenue. Patterson said that he may have turned around and came back. I reminded him that he advised dispatch that he was on a walking stop on the side of Black and White on

40th Street. He didn't recall, but said if he advised that he was on the side of Black and White on 40th, it may have been because that is where he pulled up; it is only 20 to 30 feet from the front door.

Upon meeting with [REDACTED] Officer Patterson told him to wait so he could figure out what was going on. He told us at that time he wasn't detaining him. However, [REDACTED] swiped and grabbed at his arm and in response, Patterson took hold of [REDACTED] wrist and pulled his shoulder away from him. [REDACTED] turned away and tried to strike Patterson, so using "controlling force" he moved him to the ground and handcuffed him. Patterson said had [REDACTED] sitting against the wall. He said his first inclination was to detain [REDACTED] for safety, because he didn't know what he might have been involved in when he was in the store.

Officer Patterson said that he tried to talk with [REDACTED] and ask him simple questions which he could not answer. He appeared to be in an "altered mental state", obviously intoxicated and was a danger to himself and others. Patterson decided to place a 5150 hold on [REDACTED] but recalled Officer Rojas arriving at the scene and telling him that [REDACTED] didn't meet the criteria for a 5150 detention. He said, although it went against his better judgment, he was swayed by Officer Rojas to arrest [REDACTED] for public intoxication (647f PC). Patterson said that Rojas isn't a supervisor, but he is a senior officer to him and was one of his FTOs, so he capitulated.

Patterson completed a Consolidated Arrest Report (CAR) and transported [REDACTED] to North County Jail. He said that by the time he had arrived at the jail, [REDACTED] intoxication level was "through the roof", he urinated in the patrol car and he couldn't sit up by himself. Patterson got him out of the car to take him into the intake area and the jail staff indicated not to bother.

I asked for clarification and he said that he drove into the sally port; he opened the door and got [REDACTED] out of the car. He started to walk him to the gate where the jail staff opens the door and that is when they said they weren't going to take him. He indicated that the jail staff didn't bother to ask the usual medical questions. So, he turned around and put [REDACTED] back into his car, called for an ambulance to transport [REDACTED] on a 5150 hold and completed the necessary paperwork. He said that this is common practice for EPD if the jail refuses to accept a person brought in for public intoxication.

Once the ambulance left with [REDACTED] Patterson returned to EPD. He said just as he pulled into the back lot, he received a call to assist the ambulance crew as [REDACTED] was becoming violent. He said Officer Malec was dispatched to assist him and they drove into Oakland. By the time they had gotten there, Oakland Police had assisted the ambulance crew and their assistance was no longer needed.

I asked if the CAR would be included with the 5150 report and he told me that it would not. He said that the CAR has nothing to do with the case any longer since he wasn't booked and was no longer arrested for public intoxication. Officer Patterson stated the CAR is discarded; that was the way he was trained. Patterson told us that a CAR is not a police report. It is only an arrest sheet for the jail.

I provided Patterson with a copy of the 5150 report so that he could refresh his memory. The first statement of contact (section A) on that document, Patterson wrote that he noticed [REDACTED] causing a disturbance at the liquor store. The next section (section B) of the 5150 report, Officer Patterson wrote that the subject was so intoxicated that he could not stand, answer simple questions almost walked into traffic and was a danger to himself. I asked how [REDACTED] could have walked into traffic, when Patterson informed us that he immediately made contact with [REDACTED] as he was walking out of the door and took control of him. Patterson said that he didn't know; that he didn't recall.

We spoke about the possibility of him using boilerplate wording with 5150 reports. He assured us that was not the case. He said that there is something different with every 5150 report. He said that [REDACTED] may have started to walk into traffic when he was walking him to his patrol car, he didn't know.

In the last section (section C) of the report, Patterson wrote that that [REDACTED] "fell down several times". When asked at what point [REDACTED] fell down; Officer Patterson said it must have been at the jail. He said he thought he fell in the car and when he had him outside of the car he thought he fell onto the trunk. He admitted that it probably should have been worded differently; he didn't fall to the ground several times. [REDACTED] was unsteady and off balance.

I asked about documenting handcuffing and he told us that he never documents it with 5150s. He went on to explain that most 5150s can be violent and that officers almost always have to detain them in some way or another. So when dealing with individuals as violent as [REDACTED] they are always detained in handcuffs. I asked if department policy exempted the documentation of handcuffing a 5150. He was non-responsive, instead he said, that he has never documented the handcuffing of 5150s. He said that he has never been told by a sergeant or anyone else that something extra was needed besides the 5150 report.

I asked Patterson again if he knew that there was an exemption in policy in regards to documenting the handcuffing of 5150s and he said he didn't know if it was in policy. I asked if he knew if there was policy regarding handcuffing; and if he handcuffed someone was he required to document it? He replied, "I believe in policy, yeah". He stated if it was a normal arrest, he would document in the report that he had handcuffed the person.

Patterson was then asked, given the incident as he described where Officer Rojas persuaded him to arrest [REDACTED] for 647f, if he had documented the handcuffing in the Consolidated Arrest Report. He said, that he always writes on the bottom of the CAR that the subject was handcuffed, double locked after checking for spacing and transported. He stated that he does that with every arrestee. I showed him a copy of the CAR (Exhibit 23), which was retrieved from the lineup room shred box, that he had completed on [REDACTED] and asked him to show me where on the report he had written that [REDACTED] was handcuffed and the handcuffs were double locked. After reviewing the document he said, "Well, I usually always do it here on the bottom, so I made a mistake and didn't put it on this one."

I asked Officer Patterson if he recalled speaking with Sergeant Lee following the incident that evening. He said he did not. He said generally, when he places a 5150 hold on someone he doesn't need to speak with the sergeant. However, if he arrests someone and has "to go hands" on then he would speak with the sergeant. He said that the sergeant's will ask if there "was there any strikes", meaning if the officer had struck the arrestee, and if there were any injuries. But when he uses only "controlling force" and takes someone to the ground that is not reportable.

I informed him that Sergeant Lee has stated that he spoke with him at the station that day and asked if he needed to complete an UIR. Lee had documented that his (Patterson's) response was that he contacted a drunk and that he had him turn around and sit down; and then handcuffed him. Lee then asked him if he used any force and his response was no. Officer Patterson told us that he doesn't recall saying that and it couldn't be true because that isn't what happened with his contact with [REDACTED]. He told me that he didn't know why Sergeant Lee would have said those things. I asked if he and Sergeant Lee get along and he said they seem to; he couldn't think of a reason why Sergeant Lee would have

made such a statement. As far as he knows Sergeant Lee doesn't dislike him; their relationship is professional. Patterson said perhaps he misunderstood the sergeant, but he doesn't know. He went onto to say that with [REDACTED] it is always the same, meaning that officers always have to physically subdue [REDACTED] when they contact him.

I asked Officer Patterson to explain what he knew about the supervisor's Unusual Incident Report (UIR). He said that he doesn't know much, but he imagined any type of special circumstances that need further documentation would be placed into that report. He explained that he doesn't know anything about the reports; it wasn't until just recently that he learned what UIR meant.

Regarding Patterson's claim that Medrano grabbed at his arm, I asked him to why he opted to take [REDACTED] for a 5150 hold instead of arresting him for resisting and battery of a police officer; particularly after describing him as a violent person. He said he didn't consider it because he was "going the 5150 route." He said additionally, when he was switching from 5150 to 647f, he was thinking about that and not really about any of the other possible charges.

Patterson told us that he has dealt with [REDACTED] at least four or five times. He mentioned two specific incidents where he was not the primary officer, but the end results were the same. The first incident that he recalled occurred at Pack 'n Save where he assisted Officer Kelner (M. Shepherd), Officer Abogado and Sergeant Alton. He said that [REDACTED] was out of control and had to be detained in handcuffs. The second incident occurred just prior to being placed on Administrative Leave. He assisted Officer R. Shepherd and Officer Rojas in front of the Black and White Liquor store. [REDACTED] was handcuffed and on the ground.

I showed two of the three surveillance videos from Black and White from that evening and asked him to walk us through the footage.

The first video presented was from a camera located along the south side of 40th Street facing San Pablo Avenue (eastbound). A patrol car can be seen eastbound on 40th Street, making a U-turn at San Pablo Avenue. The direction from which the patrol car was traveling would not have afforded the officer a view of the interior of the store. I pointed out that the timestamp on the video is similar to the time dispatch records indicated that officer Patterson was on scene. When I mention that I was told that the officer exiting the vehicle in the video was him, Patterson said "okay" and that he didn't recall it. He indicated that the video didn't help with his recollection.

I had him view a second video that captured the front entrance of the store on San Pablo Avenue looking north. [REDACTED] is seen entering the store and a few minutes later Officer Patterson and an unidentified male come into the view of the camera from the south and walk toward the door of Black and White Liquors. Patterson said that the unidentified male is just a guy on the street who always tries to tell them things; he described him as a regular, but he doesn't know his name. As they draw near the front door, [REDACTED] is seen exiting the store and Officer Patterson makes contact with him. Officer Patterson can then be seen taking hold of [REDACTED] arm and shoulder moving him into the wall of the store and then placing his left arm around [REDACTED] neck and pulling him backwards to the ground. Officer Patterson said that he placed his arm around his chest. I showed the video again and again Patterson says yes; he put his arm around his chest. He said it was a technique he learned when working in Utah. It allows the officer to control the person and take him to the ground without fear of injury.

Patterson said much of what he saw on the video he doesn't recall. However, he did say that there appeared to have been an altercation between the unknown male and [REDACTED]. I mentioned that when he contacted [REDACTED] the video doesn't seem to depict [REDACTED] grabbing at his wrist, to which he said "Correct, that's different. I recall it different." After viewing the video, I asked him if that was "controlling force" and if it would need to be written up or mentioned to a supervisor. He said that it was controlling force and it would not need to be written up or mentioned.

I again asked about his conversation with Sergeant Lee that day and he said that there must have been a misunderstanding, because he didn't have [REDACTED] turn around, sit down and then handcuff him. He said that his response would have been the same to Lee, it is a normal thing that they do. He said that controlling force is a term he has been trained to use and it is commonly used by other officers.

Patterson's representative, Mr. Buffington asked him if it was possible that during a prior contact with [REDACTED] that he had grabbed at his wrist. Patterson replied that it happened a long time ago; relaying that [REDACTED] was lying partially in the street at a bus stop on 40th and San Pablo. He almost walked into traffic and at Pack 'n Save, [REDACTED] was pulling on hands and struggling as the officers were attempting to subdue him.

Prompted by Mr. Buffington's question; if the length of time since the incident had an effect on his recollection; Patterson said, yes it was hard to recall. It was a long time ago.

ADMINISTRATIVE INSIGHT

I found it interesting that Officer Patterson seemed to have selective recall and understanding of well-established policies and practices and how quick he was to provide rationalization and excuses for his acts and/or omissions.

Throughout the investigation of all three of the incidents, Officer Patterson's credibility is suspect. He demonstrated a convenient lapse of memory and recall in each of the incidents. His recall of insignificant issues was good, but for the more significant events for the three incidents he indicated that he wasn't able to recall. He did seem to have much better recall of this incident (August 2013) and incident 2 (December 2013), than incident 1 which took place in March 2014.

For example Officer Patterson said he couldn't recall anything as it related the first incident that occurred approximately three month ago. His rationale was that he responds to so many calls regarding disturbances in the area. Incident 1 occurred in the same area of this one that took place in August. The incident on March 9, 2014 involved allegations of him ostensibly arresting a transient, [REDACTED] [REDACTED] unlawfully was the most difficult of the three incidents for him to recall. He didn't recall a search of [REDACTED] person, handcuffing him and moving him to the back seat of his patrol car from which he could not exit unless he was released. He gave no reason for the arrest and failed to document any portion of the contact.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This event occurred over 10 months ago and there was no expectation that Officer Patterson would have perfect recall. However, he did a better job recalling the particulars of this incident than the incident on March 9, 2014. This incident took place at the same location as the March incident. He recalled meeting [REDACTED] as he exited the store at the front door; that Officer Rojas and he had a discussion about the merits of taking Medrano for 5150 vs. 647f; that [REDACTED] urinated in the back seat of the patrol car; and that he and Officer Malec were dispatched assist the ambulance crew when they experienced difficulty controlling [REDACTED].

All of the witness officers struck me as credible. Sergeant Lee in particular presented no indication that he harbors ill feelings toward Officer Patterson or had any motivation to misrepresent what he wrote the evening of this or any of the other events.

In regards to Officer Patterson's assertion that in dealing with [REDACTED] that his use of force was only "controlling force" and didn't require documentation or notification; it is clearly in direct conflict with that of every officer I spoke with about the confrontation. To a person they indicated that such action would require notification of a supervisor and documentation in an UIR; a document with which Officer Patterson said he wasn't familiar.

At one point in Patterson's interview he asserted that through previous contacts with [REDACTED] he knew him to be a violent individual. However, checking police department records, there have been a total of eight contacts with [REDACTED]. The first three (two in 2012 and one in 2013, prior to this incident) each were field contacts and no mention of violence. Patterson's contact with him at Black and White was the fourth contact with the police department. Officer Patterson was either mistaken when he spoke or lied about knowing [REDACTED] reputation prior to this incident.

As stated earlier in this investigative report, all officers are required to conform with the provisions contained in the Department Policy Manual and Manual of Rules; copies of which are made available to all. Policies and rules are trained on not only during the Field Training Program, but on an ongoing in-service basis throughout officers' employment with EPD. For Officer Patterson to claim ignorance as he has is farfetched at best. Attached are documents from Officer Patterson's Field Training book, that demonstrate, as early as his first few months on the job, he was introduced to policies as they relate to use of force, reporting, handcuffing, tactical communications, resolving high tension incidents through the use of words, searches, pat downs, ethics/honor, conduct, profanity, and etc. (Exhibits 29).

Commander Quan checked for 647f arrests by Officer Patterson for the years 2013 and 2014. She told me that she was only able to find one such report (number 1311-2547) from 2013 (Exhibit 26). In reading the narrative on the report, Officer Patterson again failed to include the statement that he had handcuffed the arrestee. This would appear to invalidate his assertion that he documents handcuffing in all arrests on the bottom of the CAR and he apparently forgot the one time in this incident.

During the interview Officer Patterson said that he has had four to five contacts with [REDACTED] but not necessarily as the primary officer. On page 41 in the third full paragraph from the top, Patterson provided two incidents in which [REDACTED] was behaving in a similar manner as he was the evening of this incident. Commander Quan located the two 5150 reports (Exhibits 27 & 28); each report described [REDACTED] as being combative and not cooperative. However, the officers who created those reports included a statement that [REDACTED] was handcuffed. In direct contradiction to Officer Patterson's to what Officer Patterson would have us believe; the use of handcuffs is not documented in 5150 reports.

FINDINGS

1. Violation of Emeryville Police Department Policy Manual Section 300.2 - USE OF FORCE

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.

EXONERATED - The investigation disclosed that the alleged act occurred, but that the act was justified, lawful and/or proper.

The surveillance video does not depict [REDACTED] grasping at Officer Patterson's wrists as he recalled. It does however, depict Officer Patterson quickly wrapping his arm around the neck of [REDACTED] and pulling him backwards to the ground. At first blush, Patterson's actions appear to be excessive in response to [REDACTED] actions as seen in the video. However, in showing the video to and discussing Officer Patterson's actions with department defensive tactics instructors they concur that his actions were reasonable.

2. Violation of Emeryville Police Department Policy Manual Section 300.4 - REPORTING THE USE OF FORCE

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

The video evidence and testimony of Officer Rojas clearly demonstrates that Officer Patterson did in fact use physical force in subduing [REDACTED]. The force used was more than might be necessary to simply control and handcuff an individual. Additionally, he handcuffed [REDACTED] early on in the contact, which is required to be documented in a report by the officer. Policy is clear that a report must be generated that accurately depicts the circumstances surrounding the use of force. The report(s) that Officer Patterson did generate make no mention of his use of force on [REDACTED] that evening.

3. Violation of Emeryville Police Department Policy Manual Section 300.4.1 - NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practical following the application of any force described in this order.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Patterson had a duty to inform Sergeant Lee that he had used a level of force that amounted to more than would be necessary to simply control the movements of [REDACTED]. Officer Patterson had ample opportunity to provide a true accounting of the force used on [REDACTED]. Even after calling Patterson into the station, Sergeant Lee provided him with an

opportunity to tell him what had happened. Instead Officer Patterson lied to Sergeant Lee telling him he used no force in taking custody of [REDACTED] and that he had him turn around, sit down, and place his hands behind his back. The video from that evening clearly shows that never occurred.

In speaking with other officers, it is clear that EPD officer should be aware of the reporting issues when using force.

4. Violation of Emeryville Police Department Policy Manual Section 344.1.1 - REPORT PREPARATION

Employees shall not repress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Sergeant Lee promptly documented his conversation with Officer Patterson regarding his contact with [REDACTED]. Lee is very credible and has not demonstrated any reason why he would exaggerate and compromise his career though generating a memorandum to the Commander that was anything but accurate.

Officer Patterson was given an opportunity to tell Sergeant Lee the truth, but he chose to lie to him when he told him that he had a drunk turn around, sit down, place his hands behind his back and he handcuffed him. When asked directly if force was used, Patterson told the sergeant that there was none. His responses to Sergeant Lee's questions amount to making a false report orally.

5. Violation of Emeryville Police Department Policy Manual Section 344.2.1 - CRIMINAL ACTIVITY REPORTING

When an employee responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the employee is required to document the activity. The fact that a victim is not desirous of prosecution is not an exception to documenting a report. The following are examples of required documentation:

(b) In every instance where a misdemeanor crime has occurred... If the victim does not desire a report, the incident will be recorded on the dispatcher's log.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Rojas was credible in his statement, that he understood [REDACTED] stole the unidentified person's glove. The video shows [REDACTED] wearing a blue glove, which he eventually removes and throws on the ground. Officer Patterson eventually retrieves the glove and hands it to the victim. Rojas stated that the individual didn't want to press charges.

The video depicts the unidentified person at the front door with a glove in one hand while pointing to [REDACTED] and speaking to Patterson. I am convinced that Officer Patterson was told of the theft prior to Officer Rojas's arrival, and he failed to follow policy and ensure a crime

report was generated. As the primary officer on this incident, Officer Patterson is responsible to ensure a report is generated, regardless of the victim's desire to pursue charges.

6. Violation of Emeryville Police Department Policy Manual Section 344.2.1 - CRIMINAL ACTIVITY REPORTING

When an employee responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the employee is required to document the activity. The fact that a victim is not desirous of prosecution is not an exception to documenting a report. The following are examples of required documentation:

(c) In every case where any force is used against any person by police personnel.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Through statements and video evidence, it is clear that Officer Patterson failed to follow policy as it relates to generating a report that included documentation of the use of force. As discussed above, Officer Patterson had information that a theft had occurred and whether he intended to address the theft of the glove when he contacted [REDACTED] or not, his knowledge of the theft and his interactions with the suspect required that the crime and the force used as it relates to the officer's actions be documented.

7. Violation of Emeryville Police Department Manual of Regulations Section 05.17 - PERFORMANCE OF DUTY

All members and employees shall perform their duties as required by the Mission and Values Statements, or directed by law, Department rule, policy or primary directive, or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Patterson failed to meet the intent of this policy in several ways. He failed to make a required report to his supervisor as it relates to the use of force. He failed to be forthcoming and truthful when questioned by a supervisor. He failed to document a crime. He failed to document the handcuffing of [REDACTED]. He failed to document the use of force. He failed to complete the 5150 report by disposing of the CAR instead of attaching it to the report.

8. Violation of Emeryville Police Department Manual of Regulations Section 06.10 - REPORTING
Members and employees, consistent with State law, shall promptly submit such reports as are required by the performance of their duties, or by competent authority.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

As stated in previous policy violations, Officer Patterson did not generate the required complete and comprehensive report that accurately described the circumstances of his contact with [REDACTED]. In addition he gave a false oral report to Sergeant Lee when questioned about the incident.

9. Violation of Emeryville Police Department Manual of Regulations Section 11.05 - USE OF PHYSICAL FORCE

The use of physical force shall be restricted to the circumstance permitted by Department directives, specified by law, and to the degree necessary for the accomplishment of a police task. Malicious assaults or batteries committed by member or employees constitute gross misconduct.

EXONERATED – The investigation disclosed that the alleged act occurred, but that the act was justified, lawful and/or proper.

As it relates to Officer Patterson's force upon [REDACTED], there is sufficient evidence to indicate that it was done without malice and was reasonable given the circumstances.

10. Violation of City of Emeryville Personnel Rules & Regulations Section 11.01 - CAUSES FOR DISCIPLINARY ACTION

B. Incompetence, unsatisfactory performance, or neglect of duty.

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Patterson demonstrated unsatisfactory performance and neglect of duty in his failure to document his use of force, a criminal act and the use of handcuffs. Additionally he had a duty and responsibility to notify his supervisor of the use of force and handcuffing of [REDACTED]. Instead he lied to him when asked direct questions regarding this matter.

11. Violation of City of Emeryville Personnel Rules & Regulations Section 11.01 - CAUSES FOR DISCIPLINARY ACTION

E. Dishonesty, theft

SUSTAINED – The investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Officer Patterson was dishonest through his lies in responding to his supervisor's inquiry as to the use of force when detaining/arresting [REDACTED]

Respectfully Submitted,

Michael Fraser